APPENDIX A.

STATUTES.

46 U.S.C. §183 (a)

"The liability of the owner of any vessel, * * * for any act, * * * done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not * * * exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." R.S. §4283; Aug. 29, 1935, c. 804, §1, 49 Stat. 960; June 5, 1936, c. 521, §1, 49 Stat. 1474.

46 U.S.C. §187

"Nothing in sections * * * 183 * * * of this title shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers or seamen, for or on account of * * * any negligence * * * of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel." R.S. §4248.

46 U.S.C. §688

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by Jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in the case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating

the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." Mar. 4, 1915, c. 153, §20, 38 Stat. 1185; June 5, 1920, c. 250, §33, 41 Stat. 1007.

45 U.S.C. §51

"Every common carrier by railroad, while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; * * *, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency due to its negligence, in its * * * boats, wharves or other equipment.

"Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth, shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter." Apr. 22, 1908, c. 149, §1, 35 Stat. 65; Aug. 11, 1939, c. 685 §1, 53 Stat. 1404.

45 U.S.C. §53

"In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence

shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided,* That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee." Apr. 22, 1908, c. 149, §3, 35 Stat. 66.

45 U.S.C. §54

"In any action brought against any common carrier under or by virtue of any of the provisions of this chapter to recover damages for injuries to such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statutes enacted for the safety of employees contributed to the injury or death of such employee." Apr. 22, 1908, c. 149, §4, 35 Stat. 66; Aug. 11, 1939, c. 685, §1, 53 Stat. 1404.

APPENDIX B.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(entered June 12, 1964)

This cause having come on for trial before this Court and memoranda having been submitted by all parties hereto, and being fully advised the Court now enters the following findings of fact and conclusions of law:

Findings of Fact

1. On October 26, 1956, at about 2:45 a.m., Clem Muth and Kurt Darr died from asphyxia by drowning in the Detroit River, Detroit, Michigan.

2. Muth was born on May 3, 1915. He and claimant Catherine E. Muth (who was born March 27, 1919) were married on November 25, 1944. Three children were born to them: Clem William, born November 29, 1947, Patricia, born December 27, 1951, and Phyllis, born February 9, 1954.

3. At the time of his death, Muth was employed by The Columbia Broadcasting System, Inc. (hereinafter referred to as "CBS"), in Chicago as a maintenance painter. He had been so employed for 4½ years. He was the president of Local 180, Painters District Council No. 14.

4. Darr was born on December 30, 1909. He and claimant Mollie Darr (who was born November 7, 1915) were married on May 4, 1935. Three children were born to them: Leighton, born June 16, 1938, Raymond, born December 16, 1943, and Janice, born February 28, 1946.

5. At the time of his death, Darr was employed by CBS in Chicago as an electronic technician. He had been employed by CBS and its predecessor corporation for 24 years. He was a member of the International Brotherhood of Electrical Workers.

6. Immediately prior to their deaths, neither Muth nor Darr was suffering from any disease or physical handicap apparent to a layman. Both knew how to swim.

7. On October 18, 1956, the yacht "Sis" left Belmont Harbor in Chicago, bound for Florida. The following persons, among others, were aboard at that time:

(a) H. Leslie Atlass, vice president of CBS in charge of its Chicago office, who was the registered owner of the "Sis" from the time he purchased her in 1947 until his death in 1960;

(b) Muth and Darr;

(c) Frank E. Johnson, a purchasing agent employed by CBS in Chicago;

(d) Raymond Mendel, Acting First Mate and Assistant Engineer of the "Sis", employed by Atlass;

(e) Robert L. Smith, engineer of the "Sis", employed by Atlass;

(f) John Wasilas, a painter employed by CBS in Chicago.

8. The "Sis" was a licensed pleasure yacht with a registered length of 101.5 feet, width of 19.2 feet and depth of 11.1 feet. Her gross and net tonnage were, respectively, 131.64 and 89.00 tons. She had two 16 cylinder pancake-type engines with a total of 2400 registered horsepower. Sleeping accommodations on board included a master stateroom, six bunks in the crew's quarters and officers' quarters which slept two.

9. At various times prior to October, 1956, CBS employees Muth, Darr and Wasilas had performed work aboard the "Sis" including painting, adjusting electronic equipment and handling lines on short Lake Michigan runs.

10. Shortly before the "Sis" sailed for Florida, Muth and Wasilas had applied one coat of paint to the hull,

resanded and revarnished the sides of the cabins and wheelhouse and painted the top deck. An additional two coats of paint were to be applied to the hull when the yacht docked in Florida.

11. On the day that the "Sis" was to sail for Florida, Johnson, on Atlass' behalf, told Muth, Darr and Wasilas that extra deck hands were needed for the voyage, and he asked them to come along to work. They agreed to do so.

12. As the trip commenced, Muth, Darr and Wasilas assisted with the folding of the lines. Shortly thereafter, Muth, Darr and Mendel were instructed by Atlass (or, on his behalf, by Johnson) to install a watertight manhole cover near the yacht's bow. They attempted unsuccessfully to do so while the "Sis" was heading into a strong wind and high waves; later the vessel was turned and slowed, and the job was completed.

13. The following afternoon, Muth, Darr, Wasilas and Mendel cleaned, mopped and straightened up the deck.

14. At various times during the voyage, Muth, Darr and Wasilas kept watch. In addition, Darr steered some of the time.

15. On October 20, the yacht stranded in the St. Clair River. Everyone aboard, including Muth and Darr, assisted in efforts to dislodge her. She finally was freed on October 22 and proceeded under her own power to the Detroit Basin, Inc., on the Detroit River.

16. On October 23, the yacht was placed on a marine rail and lifted out of the water to facilitate an inspection for damages, if any, resulting from the grounding. The yacht remained on the marine rail from that time until after Muth and Darr drowned.

17. While she was on the marine rail, ingress to and egress from the yacht could be accomplished only by means of a ladder between the rail bed and the gangway on the starboard side, slightly forward of midships.

18. While the "Sis" was on the marine rail, toilet and cooking facilities on board could not be used. The crew continued, nevertheless, to sleep on board. Muth, Mendel, Smith and Wasilas, among others, slept in the crew's quarters as they had each night after the vessel left Chicago. Johnson, who with Darr had been sleeping in the officers' quarters, stayed in a hotel after October 23; Darr slept in a hotel one of the nights October 23-24 and in the officers' quarters the other night. Atlass, who had slept in the master stateroom, moved to a hotel on October 23 and returned to Chicago on October 24.

19. When Atlass left Detroit on October 24, he told Johnson that he was in charge and that the yacht was to be repaired and readied to continue to Florida.

Thereafter, Johnson gave directions and orders and paid for meals eaten by the men.

20. While the yacht was on the marine rail, Muth and Wasilas painted the mess hall and the galley, and Mendel weaved lines and ropes.

21. On the marine rail, the "Sis" faced north. Scaffolding was erected along the yacht's starboard side and at her bow. Near the edge of the rail bed, east of the starboard side scaffolding, there were eight stanchions lined in a north-south row, 13 feet apart. The base of each such stanchion was 15 inches wide. Between the second and third and also between the seventh and eighth stanchions (from the north), there were steel cross pieces, each an inch in diameter, which crossed at a height of five and one-half feet.

22. Immediately east of the eastern edge of the rail bed was a 32 inch gap below which was water. At a point opposite the midpoint between the first and second stanchions (from the north), the water was 10-15 feet deep.

23. Immediately east of the eastern edge of the rail bed, after the gap, was a walkway the northernmost 65 foot length of which was about five feet wide. The level of this walkway was approximately two inches below that of the rail bed.

24. Abutting the east edge of this walkway was a boat shed, 24 feet high. The shed's west wall consisted of a concrete base, four feet high, and panes of glass above the base.

25. Inside the shed there were two north-south rows of ceiling light fixtures, four fixtures to a row. These rows were located 15 feet and 36 feet, respectively, east of the shed's west wall. The northernmost and southernmost fixture in each row was about 16 feet from the north and south ends, respectively, of the shed. Each fixture was 24 feet above the level of the dock, and within each row each fixture was 16 feet from the next. Each fixture housed a 200 watt incandescent bulb with an RLM dome-type reflector.

26. The marine rail bed was 101 feet long and 34 feet wide. Along its north (or inshore) end for 12 feet west from its northeast edge, there was a 19 inch gap north of which was a dock. This dock abutted the north end of the rail bed without any gap for 10 feet west of that portion of the north edge of the rail bed which was separated by a gap from the dock. Along the entire north edge, the water was 3-4 feet deep.

27. Access to the rail bed from shore was hazardous, particularly at night, whether it was accomplished from the walkway, by stepping across the gap, or from the dock where it was flush with the rail. Part of the five foot width of the walkway was obstructed by timbers and planks. The east side of the rail bed was made dangerous by the gap, the difference in its level as compared with that of the dock, and the presence of scaffolding, stanchions and cross bars; in addition, the rail bed was cluttered with ropes and planks. The north side of the rail bed, along part of which there was no gap, also was obstructed by scaffolding and littered with ropes and planks. The route most frequently taken from shore to the rail bed was along the walkway and across the gap.

28. Early in the evening of October 25, 1956, Muth, Darr, Mendel, Smith and Wasilas, among others, were

taken to dinner by Johnson. Thereafter, Mendel and Wasilas returned to the yacht. Smith went to a tavern called Garvin's Bar where he was joined later by Muth and Darr. The three men remained until shortly after 2 a.m., and during this period Muth and Darr consumed alcoholic beverages.

29. Muth, Darr and Smith left Garvin's Bar together. Muth soon commenced staggering and had to be assisted by the other two. At one point, Muth slipped and fell into the street and had to be aided to his feet.

30. The three men proceeded to the Detroit Yacht Basin where the outside door to the boat shed was locked. They rang for the night watchman who came, turned on the overhead lights in the shed and unlocked the door to let them pass through. As they did so, Muth was staggering and Darr, on Muth's left, was assisting him. Smith followed, a few steps behind.

31. The three men turned south down the walkway. Opposite a point between the first and second stanchions, about 15 feet south of the northern terminus of the walkway, Muth fell into the gap between the walkway and the rail bed. Immediately, Darr jumped in to try to save Muth.

32. Wasilas and Mendel, both asleep on the yacht, were awakened by Smith's cries for help. By the time they reached the walkway where Smith, who was unable to swim, was shining a flashlight into the water. Darr had disappeared from sight. Wasilas and Mendel jumped into the water to assist Muth, but they were unable to rescue him.

33. At the time of the drowning, no member of the crew had been discharged by Atlass or his authorized agent.

34. Muth and Darr had a more-or-less permanent connection with the relevant voyage of the "Sis".

35. The services which Muth and Darr performed on the "Sis" were maritime in character.

36. At the time of the drownings, the "Sis" was a vessel in navigation.

37. Minimum levels of lighting recommended by the Illuminating Engineering Society are the following: general areas of shipyards, 5 foot candles; freight and passenger piers, 20 foot candles; inactive pedestrian and/or conveyor entrances normally locked and infrequently used, 1 foot candle.

38. At the time of the drowning, illumination on the walkway, dock and rail bed was less than one foot candle.

39. Considering the debris and other obstacles on the walkway, dock and rail bed, and the hazards created by the gaps and differences of levels, the lighting of the walkway, dock and rail bed at the time of the drowning was insufficient.

40. Muth and Darr were, in part, responsible by reason of their own negligence for their deaths. Both had been drinking alcoholic beverages immediately prior to the drowning, Muth having consumed substantially more than Darr. Both men knew or had reason to know of the debris and other obstacles on the walkway, dock and rail bed, and of the gaps, differences in levels and poor lighting. Muth's negligence was a 50% factor in causing his death, while Darr's negligence was a 30% factor in causing his death.

41. Atlass personally, who was in Chicago, was without responsibility for the hazardous condition of the walkway, dock and rail bed as it existed at the time of the drownings.

42. On March 15, 1961, the "Sis" was sold by Atlass' estate for $30,000. In 1952, Atlass had asked $85,000 for the yacht. In 1954, he had reduced the price to $75,000, and in 1956, he again offered to sell her for this amount.

In 1956, the replacement cost of the "Sis" was more than $100,000. In 1962 and 1963, several qualified marine appraisers retained by the petitioner expressed opinions as to the fair market value of the "Sis" in 1956 which ranged between $25,000 and $35,000.

43. The fair market value of the "Sis" on October 26, 1956, was $50,000.00.

44. On March 22, 1957, claimant Catherine Muth filed in this Court civil action No. 57 C 528 stating a claim against Atlass under the Jones Act, 46 U.S.C. § 688. On April 22, 1957, the instant proceeding was commenced by Atlass, filing a petition for limitation of or exoneration from liability. On October 23, 1959, claimant Mollie Darr filed civil action No. 59 C 1692 against Atlass and CBS, under the Jones Act. Shortly thereafter, claimant Muth filed civil action No. 59 C 1697 against CBS, under the Jones Act. Atlass died on November 18, 1960, and his executors were substituted as the petitioners in the instant action. Upon the execution of a covenant not to sue, both claimants settled their suits against CBS.

45. On October 26, 1956, Muth and claimant Catherine Muth had a joint life expectancy of 24.63 years; Darr and claimant Mollie Darr had a joint life expectancy of 21.04 years.

46. If they had survived, Muth and Darr both would have retired upon reaching the age of 65. On October 26, 1956, therefore, Muth had a work expectancy of 23 years, 6 months, and Darr had a work expectancy of 18 years, 2 months.

47. Muth and Darr each spent 25% of his income on himself.

48. Claimants Catherine Muth and Mollie Darr each received $12,500.00 from CBS in exchange for a covenant not to sue.

49. Muth and Darr each would have received biennial wage increases of 4% from the expiration of the present contract until the date of their retirement.

Conclusions of Law

1. The Court has jurisdiction over the instant litigation.

2. Muth and Darr were seamen within the meaning of the Jones Act, 46 U.S.C. § 688, at the time of their deaths. See Carumbo v. Cape Cod S. S. C., 123 F. 2d 991 (1st Cir. 1941).

3. From October 18, 1956, when the voyage commenced, to and including the time of the drownings, Muth and Darr were borrowed servants of Atlass', and accordingly he was their "employer" within the meaning of the Jones Act.

4. Under the Jones Act, an employer is liable for injuries to or death of his seamen-employees proximately caused by the employer's failure to provide a safe means of ingress to and egress from the vessel. This duty extends to an area in close proximity with the gangway or gangplank such as the place where Muth and Darr drowned. Cf Marceau v. Great Lakes Transit Corp., 146 F. 2d 416 (2d Cir.), cert. denied, 324 U.S. 872 (1945).

5. Negligence of seamen-employees which proximately contributes to their injury or death reduces proportionately the amount of damages which may be recovered of the employer.

6. Atlass' liability to claimants Catherine Muth and Mollie Darr is limited to the fair market value of the "Sis" as of the date of the drownings. 46 U.S.C. § 183.

7. In determining present values in this case, a discount factor of 5% should be used. In calculating interest in this case, an interest rate of 5% should be used.

8. The following damages, which must be reduced by 50% (the contribution to Muth's death of his own negligence), have been sustained by claimant Catherine Muth:

a. Muth's lost wages from CBS employment from the date of his death to date, reduced by 25% (which he would have spent on himself), plus

b. The present value of Muth's future lost wages from CBS employment from the present to the date of his retirement, reduced by 25%, plus.

c. the present value as of his death, plus interest to date, of $500.00 per year for 24.63 years as compensation for services performed around the house and for parental guidance, plus

d. the present value as of his death, plus interest to date, of Muth's pension rights at his retirement, less the amount already received therefor by Mrs. Muth.

9. Mrs. Muth is not entitled to compensation which Muth might have received as a result of his continuing to serve as president of his union local because the duration of such term of office cannot be determined with a reasonable amount of assurance.

10. The following damages, which must be reduced by 30% (the contribution to Darr's death of his own negligence), have been sustained by claimant Mollie Darr:

a. Darr's lost wages from CBS employment from the date of his death to date, reduced by 25% (which he would have spent on himself), plus

b. the present value of Darr's future lost wages from CBS employment from the present to the date of his retirement, reduced by 25%, plus

c. the present value as of his death, plus interest to date, of $500.00 per year for 21.04 years as compensation for services performed around the house and for parental guidance, plus

d. the present value as of his death, plus interest to date, of Darr's pension rights at his retirement, less the amount already received therefor by Mrs. Darr.

11. Mrs. Muth and Mrs. Darr are entitled to aggregate damages totalling $50,000.00. Mrs. Muth is entitled to that percentage of the $50,000.00 which her damages as described in Conclusion No. 8 reduced by the amount which she received in exchange for her covenant not to sue bear to the sum of such reduced damages plus Mrs. Darr's damages as described in Conclusion No. 10 reduced by the amount which she received in exchange for her covenant not to sue; Mrs. Darr is entitled to the remainder of the $50,000.00.

Enter:

Hubert L. Will
Judge

Dated: June 12, 1964 (Record 104-118)

APPENDIX C.

JUDGMENT ORDER

(entered June 25, 1964)

The Court having previously entered its Findings of Fact and Conclusions of Law and directed the parties to prepare a judgment Order consistent with such Findings of Fact and Conclusions of Law, makes additional Findings of Fact as follows:

8A: Muth's lost wages from CBS employment from the date of his death to date, reduced by 25% (which he would have spent on himself), is in the amount of $44,566.08.

8B. The present value of Muth's future lost wages from CBS employment from the present to the date of his retirement, reduced by 25%, is $83,073.90.

8C: The present value as of his death, plus interest to date, of $500.00 per year for 24.63 years, as compensation for services performed around the house and for parental guidance, is $7,152.66.

8D. The present value as of his death, plus interest to date, of Muth's pension rights at his retirement, less the amount already received therefor by Mrs. Muth, is $7,262.34.

The sum of 8A through 8D is $142,054.98, which, when reduced by 50% on account of contributory negligence, results in $71,027.49 before reduction by $12,500.00 for the widow's Covenant Not to Sue, and results in $58,527.49 after such reduction.

10A: Darr's lost wages from CBS employment from the date of his death to date, reduced by 25% (which he would have spent on himself), is in the amount of $62,159.03.

10B: The present value of Muth's future lost wages from CBS employment from the present to the date of his retirement, reduced by 2%, is $80,450.37.

10C: The present value as of his death, plus interest to date, of $500.00 per year for 21.04 years, as compensation for services performed around the house and for parental guidance of $6,563.86.

10D: The present value as of his death, plus interest to date, of Darr's pension rights at his retirement, less the amount already received therefor by Mrs. Darr, is $12,003.25.

The sum of 10A through 10D is $161,176.51, which, when reduced by 30% on account of contributory negligence, results in $112,823.56 before reduction by $12,500.00 for the widow's Covenant Not to Sue, and results in $100,323.56 after such reduction.

Mrs. Muth is entitled to 36.84426% of $50,000.00, and Mrs. Darr to 63.15574% of $50,000.00, or $18,422.13 and $31,577.87 respectively.

It Is Therefore Ordered, Adjudged And Decreed that claimant, Catherine E. Muth, recover of and from the Petitioners herein the sum of $18,422.13 and costs, and claimant, Mollie Darr, recover of and from the Petitioners $31,577.87 and costs.

Enter:
/s/ H. Will
Judge

Dated: 6-25-64 (Record 140)

APPENDIX D.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 15837 SEPTEMBER TERM, 1966 JANUARY SESSION, 1967

CATHERINE MUTH, Administratrix of the Estate of Clem Muth, Deceased, and MOLLIE DARR, Administratrix of the Estate of Kurt Darr, Deceased,
Claimants-Appellants,
v.
HARRIET M. ATLASS and CHICAGO TITLE AND TRUST COMPANY, Executors of the Will of H. Leslie Atlass,
Petitioners-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JANUARY 25, 1967

Before KILEY, SWYGERT and MAJOR, *Circuit Judges.*

Per Curiam. This appeal presents this case for the second time. The suit was brought in admiralty in April, 1957, by petition of Atlass as owner of the yacht "Sis" for exoneration from or limitation of liability for the deaths of seamen Clem Muth and Kurt Darr, who were drowned while returning, from a night ashore, to the yacht, then in a shipyard in the Detroit River. Widows of the seamen, as administratrices of the decedents' es-

tates, filed answers to the Atlass petition and claims for recovery of damages under the Jones Act in May, 1957. Atlass died November 18, 1960, and his widow and the Chicago Title and Trust Company were substituted as petitioners. After a lengthy trial the district court denied the petition for exoneration, but granted a limitation of liability. Petitioners and claimants both appealed from that judgment.

On June 30, 1965, this court filed its opinion in those appeals, Nos. 14872 and 14873. *In re Atlass' Petition,* 350 F.2d 592 (7th Cir. 1965), *cert. denied,* 382 U.S. 988 (1966). We held that the deaths of claimants' decedents Clem Muth and Kurt Darr were the "result solely of their own gross misconduct"; and that the district court had erred in refusing to exonerate petitioner Atlass from all loss or damage resulting from the deaths. We reversed the judgment of the district court and remanded "for such further proceedings as are not inconsistent with this holding." *Id.* at 601.

Thereafter claimants filed a petition for rehearing in this court, which was denied. Their petition for certiorari to the Supreme Court of the United States was denied. 382 U.S. 988 (1966). They then petitioned for rehearing of the denial of certiorari. The petition was denied by the Supreme Court, 383 U.S. 923 (1966), as was a motion for leave to file a second petition for rehearing. 384 U.S. 914 (1966). The mandate of this court thereafter issued.

The mandate was filed in the district court April 12, 1966. Claimants there filed "A Motion to Clarify Findings in Accordance with the Mandate of the U.S. Court of Appeals." The district court heard extensive arguments of counsel, denied the motion May 26, 1966, and entered judgment June 24, 1966, "That the prayer of [Atlass'] petition for exoneration is granted and sustained," and assessed the claims of claimants "upon the merits and with prejudice." The appeal now before us followed seek-

ing a reversal of the district court judgment of June 24, 1966, entered pursuant to this court's mandate in Appeals No. 14872 and 14873.

We think that our previous holding in this case and the mandate issued pursuant to that holding virtually directed the district court to enter the judgment which it entered and from which the appeal before us is taken. The court would have erred if it had not entered the judgment it did enter.

AFFIRMED.

APPENDIX E.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

Wednesday, January 25, 1967

Before
Hon. Roger J. Kiley, Circuit Judge
Hon. Luther M. Swygert, Circuit Judge
Hon. J. Earl Major, Senior Circuit Judge

CATHERINE MUTH, Administratrix of the Estate of Clem Muth, Deceased, and MOLLIE DARR, Administratrix of the Estate of Kurt Darr, Deceased,
Claimants-Appellants,
No. 15837 vs.
HARRIET M. ATLASS and CHICAGO TITLE AND TRUST COMPANY, Executors of the Will of H. Leslie Atlass,
Petitioners-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typed pages contain a true copy of

opinion filed January 25, 1967, and judgment entered January 25, 1967 in

Cause No. 15837

Catherine Muth, et al Administratrix

vs.

Harriet M. Atlass, et al

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 20th day of February A.D. 1967.

/s/ Kenneth J. Carrick
Clerk of the United States Court of Appeals
for the Seventh Circuit.

(Seal)

APPENDIX F.

(Letterhead of Mandell & Wright, Attorneys and Counselors)
Houston, Texas

February 13, 1967

Mr. Edward G. Raszus
Attorney at Law
77 West Washington Street
Chicago, Illinois

In Re: Estate of Muth and Darr vs
Atlass et al

Dear Mr. Raszus:

I am pleased to advise you that the National Officers have authorized ATLA to file amicus curiae brief on behalf of the Administrators of the Estate of Muth and Darr. I am now considering what member of the Admiralty Section to assign the task of preparing amicus curiae brief who will do a creditable job on behalf of the important proposition which this case presents.

As I understand the problem, it seems clear that the Trial Court in effect found negligence in failing to provide a safe place to work or means of ingress or egress which he termed a failure to supply a safe place in which to work. There is no doubt that the Court in effect found negligence, yet the Appellate Court somehow felt that Court's failure to use that particular term, constituted a finding of no negligence. The record to me at least, clearly indicates to the contrary. The question as I see it, to be presented to the Supreme Court is whether the magic term "negligence" must be used by the Trial Court and the absence of such magic word must result in a verdict for the Defendant.

If you have any preference or suggestion as to whom you wish to prepare and file the brief as amicus curiae from among the members of the Admiralty Section, please advise me.

Just as soon as you finish a draft application for certiorari, please send it in to me.

I know that you are not a member of the Admiralty Section. I am herewith enclosing an application that I would appreciate your filling out and forward it to me at your earliest convenience.

Assuring you that our Section will do its utmost in this matter, I am

Very sincerely yours,
/s/ Arthur J. Mandell
Arthur J. Mandell
AJM/me

Enclosure